[INSERT PRACTICE NAME]: DOCUMENT RETENTION POLICY & DATA RECORD- AND DESTRUCTION TEMPLATES

[NOTE: amend this document to exclude documents not held by the Practice. It covers health legislation, labour laws, occupational healthm finance, commercial and consumer legislation. Amend provisions on archiving, destruction and non-statutory retention periods – in the first two tables examples are provided, please substitute with practice’s own versions of documents it holds (Parts A & B) and have those templates handy for all staff responsible for archiving & destruction]

Contents

[1. Purpose of this policy 4](#_Toc61545476)

[2. PART A: General rules for filing, archiving & retention of personal information 5](#_Toc61545477)

[3. PART B: Template for document archiving or destruction 5](#_Toc61545478)

[4. PART C: How long information is to be kept 6](#_Toc61545479)

[4.1. Constitutional legislation: PAIA (Promotion of Access to Information Act 2 of 2000) 6](#_Toc61545480)

[4.2. Constitutional legislation: POPI Act 7](#_Toc61545481)

[4.3. Health legislation: National Health Act 61 of 2003 & Regulations issued thereunder 7](#_Toc61545482)

[4.4. Health Legislation: Health Professions Act 56 of 1974, Ethical Rules & Booklets 8](#_Toc61545483)

[4.5. Health legislation: Medical Schemes Act 121 of 1998 9](#_Toc61545484)

[4.6. Health legislation: Medicines and Related Substances Act 101 of 1965, Medical Device (“MD”) Regulations, 2016 and General (Medicines) Regulations (“GR”), 2017 9](#_Toc61545485)

[4.7. Pharmacy Act 53 of 1974 10](#_Toc61545486)

[4.8. Occupational health legislation: Occupational Health & Safety Act 130 of 1993 10](#_Toc61545487)

[4.9. Occupational health legislation: Compensation for Occupational Injuries and Disease Act 130 of 1993 11](#_Toc61545488)

[4.10. Occupational health legislation: Mine Health and Safety Act 29 of 1996 11](#_Toc61545489)

[4.11. Consumers / Patients: Consumer Protection Act 68 of 2008 11](#_Toc61545490)

[4.12. Consumers / Patients: National Credit Act 34 of 2005 12](#_Toc61545491)

[4.13. Business legislation: Broad-based Black Economic Empowerment Act 53 of 2003, the Code of Good Practice, 2013 12](#_Toc61545492)

[4.14. Business Legislation: Companies Act 71 of 2008 13](#_Toc61545493)

[4.15. Business: Competition Act 89 of 1998 14](#_Toc61545494)

[4.16. Business legislation: Electronic Communication and Transactions Act 25 of 2002 (“ECTA”) 14](#_Toc61545495)

[4.17. Business legislation: Transfer Duty Act 40 of 1949 15](#_Toc61545496)

[4.18. Business legislation: Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (“AARTO”) 15](#_Toc61545497)

[4.19. Business legislation: Trade Marks Act 194 of 1993 16](#_Toc61545498)

[4.20. Business legislation: Patents Act 57 of 1978 16](#_Toc61545499)

[4.21. Finance: Tax Administration Act 28 of 2011 16](#_Toc61545500)

[4.22. Finance: Income Tax Act 58 of 1962 16](#_Toc61545501)

[4.23. Finance: Value Added Tax Act 89 of 1991 17](#_Toc61545502)

[4.24. Finance: Customs and Excise Act 91 of 1964, as amended by Act 45 of 1995 17](#_Toc61545503)

[4.25. Finance: Financial Intelligence Centre Act 38 of 2001 (“FICA”) 17](#_Toc61545504)

[4.26. Finance: Insolvency Act 24 of 1936 18](#_Toc61545505)

[4.27. Finance: Prescription Act 68 of 1969 18](#_Toc61545506)

[4.28. Labour legislation: Basic Conditions of Employment Act 75 of 1997 and the regulations thereto 18](#_Toc61545507)

[4.29. Labour legislation: Employment Equity Act 55 of 1998 19](#_Toc61545508)

[4.30. Labour legislation: Skills Development Act No 97 of 1998 (SDA) & Skills Development Levies Act 9 of 1999 (“Levies Act”) 20](#_Toc61545509)

[4.31. Labour legislation: Employment Tax Incentive Act 26 of 2013 20](#_Toc61545510)

[4.32. Labour legislation: Labour Relations Act 66 of 1995 (LRA) 21](#_Toc61545511)

[4.33. Labour legislation: Unemployment Insurance Fund Act 63 of 2002 21](#_Toc61545512)

[4.34. Insurance: Pension Fund Act 24 of 1956 21](#_Toc61545513)

[4.35. Insurance: Short-term Insurance Act 53 of 1998 22](#_Toc61545514)

[5. PART D: Contract retention and management 22](#_Toc61545515)

# Purpose of this policy

The purpose of this document is to provide [insert PRACTICE name] with guidelines for document retention, based on the requirements of legislation and other policies.

The Protection of Personal Information Act, 2013, requires of responsible parties (i.e. this Practice) that process personal information, to only keep information “no longer than is necessary… to achieve its purpose”[[1]](#footnote-1), or:

* As is required or authorized by law;[[2]](#footnote-2)
* As is required by a contract;[[3]](#footnote-3)
* As consented to by the data subject.[[4]](#footnote-4)

Due to various legislative requirements, documents must be retained for a certain number of years, and in some cases in a particular format, and subject to prescribed criteria. Document retention also relates to the requirement that documents are accurate, up-to-date and not susceptible to unauthorised access, destruction, or abuse.

This Policy contains the general and specific rules relating to document retention for the allpersonal information held by the Practice.

1. General Practice Policy on Filing, Retention, Archiving & Destruction
2. Record-keeping system for archiving and destruction of information
3. Retention periods by legislation: Detail how and for how long the practice have to securely store that information, with reference to specific laws
4. Retention periods of contracts, etc.

# PART A: General rules for filing, archiving & retention of personal information

*[Note the details below in the table can be more specific, depending on the complexity in a practice. For example, there may be a shared drive with only certain staff having access to it, or some cloud storage system with access control, or only a hard copy system.]*

This Practice archives documents when half of its retention period has been achieved, or when storage (electronic and/or in hard copy) becomes impossible. The Practice’s Information Officer [insert name] [or: Deputy Information Officer [insert name]] will oversee the filing, archiving and destruction of information.

All archiving & destructions are recorded [insert where] and signed by the person responsible for the destruction. Where destruction is undertaken by a third party, such party will issue a certificate to that effect, in the event that the records are requested or required under the PAIA at a future date.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **GENERAL RULES FOR RETENTION, ARCHIVING & DESTRUCTION** | | | | | | | | |
| **Document / database** | **Doc / database reference** (insert ref if doc ref system is used, e.g. EmpCon2020/12/03 or Fin/Inv234 or…) | **Retention** | **Start Date for retention** | **Archive date** | **Destruction date** | **Destruction override** (e.g. legal process, query, complaint, possible evidence**)** | **Destruction method** | **Destruction by (insert name; designation)** |
| Employment contracts | Filed on backed-up computer of practice-owner only, hard copy in locked file cabinet | 5 years | From date of resignation / termination | Never for electronic version; hard copy to Metrofile 2 years after contract entered into | Year 6 after termination of employment | Retention period will be extended if. pending legal process or dispute by employee | Deletion from electronic database, hard copy retrieved from Metrofile and shredded | Practice manager, Ms AB Cee |
| Patient files (adults of sound mind, and with no possible legal issue) | Hard copy with pt numbering system starting with surname letter & file nr with date of when first patient:  Fo\_LJR/1988-12-03  Hard copies, scanned in when pt no longer active in practice or notified that. moved away | 6 years | Date of last visit | Hard copy to Metrofile after patient not at practice for 3 years | Year 7 after last visit | File to be. kept for as long as any complaint at HPCSA or another forum. | Shredded from Metrofile. | Administrative clerk,  Mr F Ile |
| Etc. | Etc. | Etc | Etc. | Etc. | Etc, | Etc. | Etc. | Etc. |

# PART B: Template for document archiving or destruction

This table must be used by all staff to record specific instances of archiving and destruction, which must then be recorded as follows:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **CONSOLIDATED RECORD OF ARCHIVING OR DESTRUCTION OF DOCUMENTS** | | | | | | |
| **Specific Document or group of documents** | **Doc / database reference** (or…) | **Archive / Destruction date** | **Reason for archiving / destruction** (please refer to Parts A and C - table on general rules of retention, archiving and destruction AND the specific retention rules set by law and retention periods) | **Destruction override** (e.g. legal process, query, complaint, possible evidence**)** | **Destruction / Archiving method & place** | **Archiving / Destruction by (insert name; designation)** |
| E.g. All inactive patient files for period Jan 2014 – Dec 2017 | Pat-files | 31 Jan 2021 | Archiving: Practice Policy allows archiving 3 years after patient inactive in practice; ensure that archiving will keep for remainder of period as set by HPCSA (6 years in total) | N/a as no destruction before lapse of 6 years | Metrofile storage, files picked up by Metrofile but packed by staff | Administrative clerk,  Mr F Ile |
| Mr PR Oblem Employment Contract | Shared drive & HR cupboard | 28 Feb 2021 | Destruction: 5 years after employment contract terminated | No override as no CCMA or other issue pending | Document deleted from electrionic database and hard copy shredded | Practice manager, Ms AB Cee |
| Etc. | Etc. | Etc. | Etc. | Etc. | Etc. | Etc. |

# PART C: How long information is to be kept

# Constitutional legislation: PAIA (Promotion of Access to Information Act 2 of 2000)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comments** |
| All requested documents that cannot be found / do not exist | S55 | Irrespective, if. lost or does not exist, affidavit by IO that doc could not be found or does not exist | n/a | Investigate if practice rules were followed |
| Health records requested and knowledge of which could cause harm to requester | S61 | As per HPCSA rules, or if also financial, as per financial legislation, disclosure however made to person nominated by patient whose records it is. | As per HPCSA (can be certified copies) or specific financial legislation | - |
| All personal information of persons deceased for longer than 20 years | S1 | Can be retained, subject to specific legislation, but no longer “personal” 20 years after date of death | Not subject to any privacy rules | Not subject to any privacy rules |
| All documents listed in PAIA Manual | S3 | Can be potentially requested and accessed. Should be retained to ensure access, as per law, consent or contract | As per specific law / contract / consent | - |
| Documents identified in PAIA Manual as subject to automatic access | S52 | Documents must be retained as per specific rules, and removed from PAIA manual list once no longer available | As per specific law / contract / consent | - |

# Constitutional legislation: POPI Act

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comments** |
| All documents | S9, s10 | Consent, contract and/or notification to include periods of retention and destruction | - | Include retention & destruction periods into all relevant documents |
| All documents | S14 | Retention of record / database must always be stipulated | Depending on record | As stipulated |
| Historical, statistical, research data (anonymized) | S14(2) | Can be retained for longer, provided that used for no other purpose (e.g. marketing, vigilance, etc.) | Depending on record | Indicated on specific database as historical, etc. with timeframe and identifiers removed |
| Deletion or destruction of a record | S14(4) | Must destroy / delete when no longer needed, as per stipulated / agreed periods or upon completion of a task | See Part A & B of this Policy | - |
| Requested deletion or destruction (request by person or persons whose personal information is / was processed) | S14(5); reg 3 | If permissible (e.g. if. not against statutory retention period), person uses POPI Regs prescribed Form 2. | None | No original and no copy should be in existence, electronically or in hard copy |
| Documents / databases created from previous information | S13, s15 | New consent or contract must set new retention period or law must be followed that sets retention period, if retention was not originally set | Depending on record |  |
| Documents / databased allegedly processed unlawfully, is inaccurate, or destruction or deletion is opposed | S6 and s7 | Retain until matters are resolved and then retain as required, amend or destroy / delete | Retain as per specific retention period. |  |

## Health legislation: National Health Act 61 of 2003 & Regulations issued thereunder

Practice deals with patient information relating to a number of its brands as it supplies products directly to consumers / customers. This information includes clinical information, and as such constitutes a “health record”.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Health records (incl notes from call centre, nurses, scheme motivations, etc.) and irrespective of held by Practice or an operator | S13 | Record must be created and maintained. No regs yet as to duration of retention. Follow HPCSA rules. References Archives Act, but which only applies to records of “enduring value”, which records are transferred to the National Archive after 20 years, i.e. suppose 20 year retention. | Not stipulated |  |
| Health records used for training, research | S16 | If no individual details, no consent and keep as long as needed | Copies |  |
| Health record changes & destruction | S17 | Offence to not maintain and to destroy records unauthorized. | Originals & copies |  |
| COVID-19 and other notifiable conditions | 2017 Regs | Not prescribed, but as other health records (see below) and must be shared with regulators (NICD) | Not stipulated |  |
| Cancer diagnosis | 2011 Regs, Annexure A | Practice owner must report confirmed cancer diagnosis to NICD, must set up control measures to prevent unauthorized access. Assumes retention but not prescribed. | Not stipulated |  |

## Health Legislation: Health Professions Act 56 of 1974, Ethical Rules & Booklets

The. ethical rules and those contained in the Booklets are binding and a violation thereof could render professionals liable for charges of unprofessional or unethical conduct ito section 41 of the Act. It also provides the best practice guideline for health record retention, in the absence of regulations being issued under section 13 of the National Heath Act.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg / Clause-Booklet,[[5]](#footnote-5) Ethical Rule (ER) nr** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| All health records | ER15 | All retained records must be signed | Originals or certified |  |
| Certificates & reports | ER16 | Retained reports & certificates must include info listed | Originals or certified |  |
| Prescriptions | ER17, ER23 | Medicine: 5 years as per Meds Act  Medical devices: not stipulated | Originals |  |
| Adult health records *[may need to be described and split up into specific records]* | Clause 9.2 | 6 years after record becomes dormant (last visit of patient) | Originals or certified copies |  |
| Records of children | Clause 9.3.1 | When child becomes 21 years of age | Originals or certified |  |
| Records of persons mentally incompetent | Clause 9.3.2 | For duration of person’s lifetime | Originals or certified |  |
| Occupation health records (e.g. person who require oxygen equipment due to working in mine or polluted area) | Clause 9.4 | 20 years after treatment | Originals or certified copies |  |
| Health records of conditions that could manifest only later (e.g. asbestosis) or where legal action would not prescribe (e.g. child abuse or assault) | Clause 9.6 | 25 years after last entry | Originals or certified copies |  |
| Prescriptions | ER 17, also see Meds Act and General Regs below | 6 years after record dormant, unless it involves treatment for a child, occupational health matter, etc. | Copy, as pt & pharmacist will have original |  |

## Health legislation: Medical Schemes Act 121 of 1998

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Archiving rules** | **Comment** |
| Claims to medical schemes and motivations that underpin it | Reg 5, 6 and s59;  S47, 19 and 50 | Claims must be made within 4 months, but schemes can claw back and investigate for periods or around 3 years after the claim was lodged.  Complaints can be lodged at any stage, even years after non-payment of a claim, and records relating to claims, motivations, internal appeals, etc. is recommended to be kept for at least 5 years after decline of payment. | Not stipulated | Schemes in s59(3) matters require the acquisition documents of supplies, dispensing records, referrals, records relating to hospitalization. |

## Health legislation: Medicines and Related Substances Act 101 of 1965, Medical Device (“MD”) Regulations, 2016[[6]](#footnote-6) and General (Medicines) Regulations (“GR”), 2017[[7]](#footnote-7)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Prescriptions | GR reg 35 | Medicines: 5 years or 5 years after last entry in a prescription book for dispensing doctors). No provision for device prescriptions or orders. | Copies of prescriptions; Book in original form |  |
| Dispensing licence | S22C, GR reg | 5 years, must be renewed so all application, updates and renewal documents to be kept for as long as Practice active | N/a |  |
| Records relating to implantable devices | MD reg 26 | 50 years on date, purchaser, address, quantities, batch numbers  Order records must be kept for 5 years after expected life of device | Not stipulated, but must be “permanent” |  |
| Adverse event database | MD Reg 17, Guideline 8.04, Nov 2019 | Must be maintained (i.e. ongoing), no retention period set, check device life. EU requires ongoing and 10 years after last product sale. Specify in Practice QMS. | Not stipulated |  |
| Clinical research | S21, GR reg 30, MD reg 16, GCP[[8]](#footnote-8) 2006 | Records must be retained post the study – at. least 15 years after study completion as per GCP Guidelines | Originals |  |
| Records on destruction of device | MD reg 14 | As determined by SAHPRA. | Not stipulated |  |
| Records on destruction of medicine | GR reg 44 | Must be destroyed by a pharmaceutical waste entity, who must issue a certificate to the practice. No retention period stipulated. |  |  |
| Dispensing records | GR reg 35 | Indefinitely (permanent) book with details set out in reg 35 | Original, hard copy |  |
| Books & records | S28 | Inspectors can seize any record, retention rules to be clear if records are requested pertaining to medicines and/or any medical device in a practice | As and if stipulated for specific record |  |

## Pharmacy Act 53 of 1974

Medical practices cannot operate as pharmacies, cannot share rooms with pharmacies, etc. Therefore, not subject to the Pharmacy Act.

[Oncology practices with mixing pharmacies operating in their buildings, please contact EKA]

## Occupational health legislation: Occupational Health & Safety Act 130 of 1993

This applies to the practice and its staff:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| All records (incl investigations, recommendations, minutes, etc.). of Occ Health & Safety Committee or the occupational health & safety officer | S20, reg 5[[9]](#footnote-9) | Occ health committee or health & safety officer must keep records; must be kept for at least 3 years | Not stipulated |  |
| Records relating to asbestos, lead, noise (incl medical surveillance & baseline records) | Various sets of Regs[[10]](#footnote-10) | 40 years | Not stipulated |  |
| Records relating to hazardous chemicals, air (incl medical surveillance & baseline records) | Regs[[11]](#footnote-11) | Keep record for 30 years | Not stipulated | If employer stops activities, record to be handed to provincial Dept of Labour |

## Occupational health legislation: Compensation for Occupational Injuries and Disease Act 130 of 1993

This applies to the practice staff and patients suffering occupational injuries and/or diseases:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Archiving rules** |
| Employee (claimant) records. (earnings, time worked, overtime, etc.) | S81(2) | 4 years after last entry, except where regs under OHSA on specific conditions / sectors require differently (see below) | Not stipulated |  |
| Employee records relating to re-opened claims | S7,  Reg 5[[12]](#footnote-12) | Not prescribed, but 4 years after last entry (i.e. after employment termination) may not suffice in all cases of all conditions. H&S consultants recommend 10 years. | Not stipulated |  |
| Medical reports | S74 | Not stipulated, but would have to be retained until patient claim is finalized and provider accounts settled. Due to potential re-opening, recommended 10 years after last event relating to claim. | Copy | Copy of report should also be available to the patient |

## Occupational health legislation: Mine Health and Safety Act 29 of 1996

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Medical records relating to miners | S15(2) | 40 years from date of last medical surveillance | Not stipulated |  |

## Consumers / Patients: Consumer Protection Act 68 of 2008

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Intermediaries (e.g. sales agents, brokers) | S27,  reg 10 | 3 years after document created: Intermediary must keep the records, co top ensure contractually that intermediary does so. | Copies or electronic formats |  |
| Competitions (all 18 pieces of information / documents as prescribed) | S36,  Reg 11 | 3 years, but note SAMED Code requirement of 5 years where competition relates to the medical device business. | Not stipulated | After SAMED period of retention |
| Fixed-term consumer agreements | S14 | Not stipulated in CPA but see National Credit Act below. General rule of not retaining for longer than necessary, and consents (e.g. if person added to a general consumer database for future marketing) must be considered | Not stipulated | As per co policy and NCA |

## Consumers / Patients: National Credit Act 34 of 2005

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg[[13]](#footnote-13)** | **Period of retention** | **Original or copy to be retained** | **Destruction rules** |
| All documents to create credit agreement, debt review documents (see list in reg 55(1)(b)) | S170, Reg 55 | 3 years after document created | Not stipulated |  |
| Agreement / contract / applications (signed Ts&Cs / billing notices / agreements to r(e)pay) | S170, Reg 56 | 3 years after termination | Not stipulated |  |
| All judgements | Reg 17(1) | 5 years or until judgement is rescinded | Not stipulated |  |

## Business legislation: Broad-based Black Economic Empowerment Act 53 of 2003, the Code of Good Practice, 2013

[NOTE: For practices with a turnover of R50m or more. Qualifying small enterprises to retain documents only pertaining to the pillars chosen for verification. Exempted Micro-Enterprises (turnover below R10m) to keep proof of shareholding and proof of turnover – financial accounts or statements]

B-BBEE verification is an annual process. However, disputes in relation to verification, and delays in finalisation of verification scores necessitates the keeping of records for at least two years after a financial year-end as verification is on previous completed financial year and may take longer than 6 months. Appealing an allocated score sometimes necessitate referring to previous records relating to previous verifications. Many of the records in any event have to be kept in terms of other legislation for longer. However some records, such as in-kind contributions, or attendance registers that include race, gender and nationality details, may not be routinely retained for periods beyond, for example, a congress or a meeting.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **BEE Code Series**  **(**for large practices) | **Period of retention** | **Original or copy to be retained** | **Comment** |
| *[Practice may have documents it retains as part of its BEE project that needs to be included here as well]* |  | Recommended at least two years after end of each financial year. |  |  |
| Management control documents: Directors & minutes of Board meetings | 200 | As per Companies Act (see below) | Originals |  |
| Employment Equity | 200 | As per EE Act and Regs (see below) | Originals |  |
| Skills Development:  Internal (Meeting agenda’s materials, attendance registers, certificates, travel records, expenses, etc.) | 300 | As per SDA and Regs (see below), and for all other supporting documentation recommended at least two years after end of each financial year. | Originals |  |
| Skills Development:  external (Meeting agenda’s materials, attendance registers, certificates, travel records, expenses, etc.) | 300 | As per SDA (see below) and for all other supporting documentation recommended at least two years after end of each financial year. | Originals |  |
| Enterprise & supplier development (invoices & payment records to provide spend; contracts, proof of spend on development, photographs, letters, testimonials) | 400 | As per financial record-keeping criteria & financial legislation (see below), non-financial records recommended at least two years after end of each financial year. | Originals |  |
| Socio-economic development records (contracts, donation & other policies, records of donates time, photographs, letters, testimonials, etc.) | 500 | As per financial record-keeping criteria & financial legislation (see below), non-financial records recommended at least two years after end of each financial year. | Originals |  |

## Business Legislation: Companies Act 71 of 2008

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| AGM reports, AFS, accounting records; Notices, minutes, resolutions of shareholder meetings; all shareholders documents in relation to a resolution | S24(3)(c) & (d) | 7 years after date of event | Originals in hard copy at a location in RSA |  |
| MOI, rules and certificate of incorporation | S24(3)(a) | “maintained”, i.e. keep indefinitely | Originals in hard copy at a location in RSA |  |
| Directors | S24(3)(b) | As at any point in time, i.e. “maintained”  Past directors: 7 years | Originals in hard copy at a location in RSA |  |
| General shareholder communications | S24(3)(e) | 7 years after date of communication issued | Originals in hard copy at a location in RSA |  |
| Board of Directors meetings & resolutions, Directors and Board Committees | S24(3)(f) | 7 years after meeting or date of resolution adopted | Originals in hard copy at a location in RSA |  |
| Shareholders register | S24(4)(a) | Indefinitely, i.e. “maintained” | Originals in hard copy at a location in RSA |  |
| All other documents, accounts, records, etc. required by Companies Act | S24(1) | 7 years, unless another law requires a longer period. | Originals in hard copy at a location in RSA |  |
| Board / Practice Code of Conduct, Terms of Reference, etc. | King IV | Not prescribed, unless approved as part of above documents, then retain for 7 years | Not prescribed |  |

## Business: Competition Act 89 of 1998

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Minutes of association meetings relating to matters of coding and conditions of trade;  Practice records on considerations regarding setting of fees, price files, fee lists, etc; contracts with suppliers, including documentation relating to the negotiation thereof; market share data; special deals and arrangements with suppliers and documents relating to the negotiation of pricing (acquisition costs, fees, etc.); all agreements or arrangements that are exclusive; notes / records of competition law objections,etc. as proof of exclusivity.  Competition law training records. | S77 | Not prescribed, but how fees have been set independently from other practices and professional associations may be needed by Practice to defend competition law complaints or to provide information when Commission or Tribunal so requires.  Recommended retention period of 10 years. | Format not relevant, i.e. can be electronic |  |

## Business legislation: Electronic Communication and Transactions Act 25 of 2002 (“ECTA”)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| All electronic documents or documents saved in electronic versions | S11 | Not without legal force and effect only because it is electronic. Usual retention periods for that type pf document would therefore apply | Not necessarily, unless so. prescribed |  |
| Documents containing signatures | S13 | Documents where parties agree on e-signatures or where advanced signatures[[14]](#footnote-14) are used are valid and can be retained as hard-copies are / would have. Any electronically affixed signature not *per se* invalid. Note some contracts or documents require a “wet signature” meaning not electronic | Electronic |  |
| Requirement that a document must be “In writing” | S12 | Can be in form of a data message (i.e. electronic) and can be retained same as hard copy “in writing”. Note difference of “by hand”. | Electronic |  |
| All documents that require retention | S16 | As long as electronic record is accessible and represents accurately that document (e.g. could not have been changed afterwards), and origin and destination could be established, then retention as per stipulated and applicable period would be valid.[[15]](#footnote-15) | Electronic |  |
| Documents required by legal processes, inspectors, etc, | S17, s28 | Electronic form acceptable if electronic document reliable and accessible / usable for its purpose, and provided document is unaltered | Electronic |  |
| Documents requiring Notarisation, acknowledgement and certification | S18 | Can be validly done by advanced electronic signature, also where hard copy is required such certified electronic copy would be value | Electronic |  |
| Agreements | S22 | Not invalid purely because entered. into electronically, provided that no agreement to contrary entered into by parties, e.g. that wet signature ito s21. | Electronic, unless agreed to be parties that not electronic |  |

## Business legislation: Transfer Duty Act 40 of 1949

Only applies if Practice owns any fixed property.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Purchase of land (property): a record of the sale including a description of the property sold, the person by whom and the person to whom the property has been sold and the price paid for the property | S15 | 5 years after sale | Originals with wet signatures |  |

## Business legislation: Administrative Adjudication of Road Traffic Offences Act 46 of 1998 (“AARTO”)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Details of drivers of Practice vehicles: full names, acceptable identification and residential and postal address | S17(5) | Co must at all times maintain records of who is driving their vehicles | Not stipulated | As it could also relate to occupational health matters, destroy after longest period of retention |

## Business legislation: Trade Marks Act 194 of 1993

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Certificate of Trade Mark | S29(2), s39(7) | Keep as proof for duration of mark being used or to be protected (10 years + after any renewal term if obtained) | Original, must be signed |  |

## Business legislation: Patents Act 57 of 1978

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Certificate of patent | S44, s46 | 20 years, or longer if possible disputes relating to the patent | Original with seal of CIPC |  |

## 

## Finance: Tax Administration Act 28 of 2011

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Returns, whether required to be submitted or not and. underpinning records | S29, s30 | 5 years after the date of submission / required submission / not required submission | Originals |  |
| Records subject to, or aware of possible audit and/or subject to an appeal | S32 | Until audit / appeal is concluded | Originals |  |

## Finance: Income Tax Act 58 of 1962

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| All payroll, payroll calculations (deductions, benefits, etc.), returns, and all related info (EMP’s) | Item 14, 4th Schedule as gazetted[[16]](#footnote-16) | 5 years from date of submission to SARS | Originals or. as prescribed by the SARS Commissioner. |  |

## Finance: Value Added Tax Act 89 of 1991

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Records of goods / services supplied, invoices, credit notes, charts & codes of account, bank statements, etc., all customs documents, | S55, s15, s16, s20 | 5 years from date of submission of return | Originals, if for invoices not available, marked “copy” |  |

## Finance: Customs and Excise Act 91 of 1964, as amended by Act 45 of 1995

[Only applicable where practice imports / exports goods]

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg / Rule[[17]](#footnote-17)** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Invoices, credit. notes, etc. on imports | Rule 39.05 | Retain for production to SARS officials | True copies of invoices |  |
| books, accounts or documents, specifically: bill of entry contracts of purchase & sale, shippers statement of expenses, clearing instructions;  bills of entry, bills of lading or other transport documents, suppliers invoices, packing lists, bank stamped invoices, payment advices | S39,  s101,  Rules 101.1 to 101.3 | Must be available for inspection as. Required by regulations & rules: 5 years from date of import, export, purchase, use by inspector, etc. (depending on the specific document listed and its use), and available until clearance (which may exceed 5 years) | Could be electronic |  |
| Exporter / entities supplying to an exporter: certificates of origin & all export documents, including supporting documents on origin; importer of such goods | Rule 101.2 | 5 calendar years from date of entry for imports, or from date of entry for goods to be exported, or, if placed under Customs Procedure, 5 calendar years from completion of that process | Could be electronic |  |
| CA’s certificate on bools, accounts, documents, operations, transactions | S101(3) | As prescribed in regulations, | Could be electronic |  |

## Finance: Financial Intelligence Centre Act 38 of 2001 (“FICA”)

This Act applies to banks, long terms insurers, estate agents, those keeping assets in trust, financial advisories, etc. It does not apply to Practice, but requires awareness by Practice of the documents these entities must retain when a bank, broker, etc. enter into a business relationship or once-off transaction with Practice.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Due diligence documents including customer identity, purpose of business relationship, sources of funding, prominent foreign & local persons, family members & close associates | S21, s21A, s21B – 21H | 5 years from date of each transaction; and 5 years after business relationship is terminated, if reported to Centre, 5 years from date of that report to FIC | Not specified, but as it could lead to criminal investigations, proposed originals |  |

## Finance: Insolvency Act 24 of 1936

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Insolvent: All property and cash transactions | S134 | From 2 years prior to sequestration | Not specified, but recommend originals |  |
| All documents during period of insolvency | S155 | 5 years after sequestration | Not specified, but recommend originals |  |

## Finance: Prescription Act 68 of 1969

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| All records, irrespective of where those records are in retention processes | S3 | 3 years after date that debt due, but. can be interrupted once action starts on a matter. | Originals or certified copies required if in dispute during legal proceedings |  |

The Prescription Act applies to claims against another person or entity, other than the state. Although it is set at 3 years, those 3 years only commence after a matter has been left, and does not apply for as long as a matter is kept alive, i.e. by a complaint, correspondence, etc. It could therefore mean that other retention times must be extended, e.g. if there is a dispute or a case relating to an occupational incident, and this commences 2 years after the date of a record created by the Practice’s. Occupational Health and Safety Committee, that record must be retained for as long as that matter is ongoing and cannot be destroyed after another 1 year (i.e. after the 3 years have lapsed). The Prescription Act’s effect could therefore necessitate an extension of the retention periods.

## Labour legislation: Basic Conditions of Employment Act 75 of 1997 and the regulations[[18]](#footnote-18) thereto

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg[[19]](#footnote-19)** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Written particulars of employment as listed in s29, incl all contracts and documents pertaining to the contract. | S29 | 3 years after termination of employment. | Not specified but must be in writing |  |
| Certificate of service | S42, Reg 6 | On employee file, 3 years after employment | Copy |  |
| As long as employed, name & occupation, time worked, remuneration, dob, etc, | S31 | 3 years after last entry on record | Not specified |  |
| Remuneration records as stipulated by s33: name 7 address, occupation, remuneration, period of salary, amounts, deductions & reasons therefor, actual amount paid, rate and overtime rate, hours worked, workplace, working hours | S33 | 3 years, but note EEA on pay differential reports if EE Plan runs 5 years or longer, and obligation to keep EE information for 5 years after last entry. | Not specified |  |
| Sectoral determinations | S58 | For as long as determination is applicable | Not specified |  |
| Any record to which employment relates | S66 | May be requested and must provided to a labour inspector. Documents for which no retention period is prescribed to be retained as per co policy | Not specified |  |
| All records under BCEA | S76 | Employer to prove authenticity | If no originals, certificates that copies are true |  |

## Labour legislation: Employment Equity Act 55 of 1998

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg[[20]](#footnote-20)** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| All records that fall under EEA (including data on race and other grounds of no unfair discrimination & required data fields in EE Plan and EE Report;  Employee declaration on gender, race, nationality & disability | S26,  EEA1 | Must be maintained, and retained for prescribed periods |  |  |
| Workplace policies and procedures pertaining to employment | S5, s15, reg 8(4) | If analysis shows amendments required, all to be retained plus analyses for 5 years after EE Plan Expiry | Not prescribed | After longest retention period |
| EE Plan (duration of min 1 year and max 5 years) & all underpinning documents, e.g. employment records, payroll records, employment stats (country, province, professions, etc.) | S20,  reg 9 EEA13 | 5 years after plan expiry | Not prescribed |  |
| EE Report and all supporting documents (not Report is public (therefore subject to PAIA), and only income differential information is confidential) | S21, Reg 10 | Not prescribed, but as it informs EE Plan and progress in it, would have to be retained for 5 years after expiry of Plan with all reports pertaining to that plan | Not prescribed |  |
| Recruitment (incl applicants & all interviewees),  promotion & training records (also of former employees),  harassment | S5, s6, s19, s51 | To be able to address matters of alleged discrimination on listed grounds, records relating to lawful consideration of race, gender, etc. is recommended to be kept for at least 5 years after event, longer if archiving is possible due to possible criminal charges in harassment cases and human rights aspects of complaints | Not prescribed, and generally complaints must be lodged. within timelines stipulated by e.g. LRA |  |
| Minutes & supporting documents of EE Committee, consultation with general staff | S16 | As per each EE Plan and each EE Report to which engagements pertain | Not prescribed | After retention period |
| Compliance orders | S37,  Reg 14,  EEA6 | An inspector. May require records to be kept, and such order must be followed | As ordered | As ordered |

## Labour legislation: Skills Development Act No 97 of 1998 (SDA) & Skills Development Levies Act 9 of 1999 (“Levies Act”)

This applies if the practice is registered at a SETA and claim back skills levies.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Learnership agreements, including register thereof | S17, s18 | Not prescribed, but keep as usual employment records would be kept after termination, i.e. 5 years. | Original  register to be kept in hard copy |  |
| SETA’s | S9 - 15 | Specific SETA can set requirements for learnerships and grants, as well as the requisite Skills Development Plans and Reports. Follow rules of SETA to which | Follow SETA-specific rules |  |
| Skills levies, including tax incentives such as the ETI | Levies Act, s 7 | Payment into Fund; As per tax requirements (5 years after filing or submission) | Follow SETA-specific rules |  |
| Skills Development Plan |  | As per SETA | As per SETA |  |
| Skills Development Report |  | As per SETA | As per SETA |  |

## Labour legislation: Employment Tax Incentive Act 26 of 2013

This Act establishes the ETI, and its actual administration is under the Income Tax Act, the Tax Administration Act and the SARS Act. Retention of documents must therefore following those Acts (in general 5 years after submission to SARS or indefinitely where submission had to be made to SARS but were not and then 5 years after actual submission, etc.).

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Records of qualifying employees | S6 | Not prescribed, but proof of qualifying criteria relating to employee to be maintained and retained at least 5 years after termination or 5 years after the date when employee no longer qualifies (e.g. older than 29 years, wages exceed that set out in section 4, etc. | Not stipulated |  |

## Labour legislation: Labour Relations Act 66 of 1995 (LRA)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** |  |
| Collective agreement, arbitration award, determination made in terms of Wage Act, strikes and lock-outs | S205 | At least 3 years from date of event / agreement’s end. | Original or reproduced | After period of retention |
| Disciplinary record indicating nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions | Clause 5, Schedule 8 | Not specified, but required under EE Report (i.e. 5 years after expiry of EE Plan). Note letters of written warning may have to be removed based on co policy. Matters relating to ill health may have to be kept ito occupational health legislation, and matters relating to harassment and discrimination according to the EEA. | Not stipulated | After period of retention |
| Mandatory disclosure information for workplace forums;  Mandatory disclosures in cases of proposed retrenchments  Trade union access to information | S89  S189 & 189A  S16 | In order to disclose information required by workplace forums, such information would have to be retained. No periods prescribed, but may relate to documents such as financials that have to be retained under companies’ legislation, tax legislation & employment laws. | Not prescribed | After period of retention |
| Privileged information, confidential information of which the disclosure would cause harm, employee personal information, non-disclosure by law or court order | S16(5) | Although retained for periods as prescribed, and potentially accessible under above sections, cannot be disclosed under s16, s89, and 189 & 189A. | As prescribed in other legislation or orders | As per relevant law, order, consent |

## Labour legislation: Unemployment Insurance Fund Act 63 of 2002

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Name, id nr, address of employment & monthly remuneration | As per Income Tax Act | 5 years after submission to SARS | Not specified |  |

## Insurance: Pension Fund Act 24 of 1956

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Board of a Fund to ensure all records kept | S7D | Must be kept properly and in accordance with legislation governing that type of record | As per specific law |  |
| Pension Fund rules | - | Indefinitely due to its application many decades after its creation / when an employee retires and thereafter | As per specific law |  |

## Insurance: Short-term Insurance Act 53 of 1998

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Section / Reg** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Policies, documents on claims, etc. | Not specifically governed | Not regulated, but retain for at least 4 years after policy expiry and for claims documents 3 years after claim has been finalised (ito prescription legislation and Income Tax Act) | Not provided |  |

# PART D: Contract retention and management

The overriding POPI Act criterion, i.e to only store personal information as long as necessary applies to the personal information included in a contract. Some contracts may have to be retained for longer than its effective life, namely for business purposes, should a relationship with a contractual party have to be re-established, for audit purposes (often linked to financial transactions and requirements, e.g. invoicing and payment), as stipulated in labour law, etc.

Follow above tables where specific contracts are concerned involving statutory periods. Also see above on ECTA.

|  |  |  |  |
| --- | --- | --- | --- |
| **Applicable document(s) / databases** | **Period of retention** | **Original or copy to be retained** | **Comment** |
| Contracts that involves statutory retention periods | Retain for period that is longest, i.e. contract implementation, contract agreement, prescription or specific legislation (e.g. a principal investigator contract in a clinical trial should be retained indefinitely, as well as trials documents such as consents) | As specified in legislation or a per Practice rules or as per. ECTA |  |
| Contracts with suppliers, rentals, leases, equipment, etc. | At least 3 years after contract terminated | As specified in legislation or a per Practice rules or as per. ECTA |  |
| Non-disclosure agreements | Indefinitely | As specified in legislation or a per Practice rules or as per. ECTA |  |
| Consents signed by practitioner | At least3 years after period to which consent pertain | Original or valid electronic version / copy |  |

1. Section 14(1). [↑](#footnote-ref-1)
2. Section 14(1)(a). [↑](#footnote-ref-2)
3. Section 14(1)(b). [↑](#footnote-ref-3)
4. Section 14(1)(c). [↑](#footnote-ref-4)
5. Booklet 9 “Guidelines on the Keeping of Patient Records”, September 2016. [↑](#footnote-ref-5)
6. GN 1515 of 9 December 2016:  Regulations relating to Medical Devices and In Vitro Diagnostic Medical Devices (IVDS) (*Government Gazette*No. 40480). [↑](#footnote-ref-6)
7. GN 859 of 25 August 2017:  General Regulations (*Government Gazette*No. 41064). [↑](#footnote-ref-7)
8. Department of Health South African Good Clinical Practice Guidelines, 2006. [↑](#footnote-ref-8)
9. GNR.929 of 25 June 2003:  General administrative regulations, 2003. [↑](#footnote-ref-9)
10. GNR.236 of 28 February 2002:  Lead regulations, GNR.307 of 7 March 2003   Noise-induced Hearing Loss Regulations, GNR.1196 of 10 November 2020:  Asbestos Abatement Regulations. [↑](#footnote-ref-10)
11. GN 1179 of 25 August 1995:  Hazardous chemical substances regulations as amended. [↑](#footnote-ref-11)
12. GN 1217 of 9 November 2018:  Regulation on IOD/OD Documents to be provided by employers to Compensation Fund in administration of Claims Adjudication processes as per section 6A (*b*) and 40 (1) of the Act (*Government Gazette*No. 42021). [↑](#footnote-ref-12)
13. GNR.489 of 31 May 2006:  Regulations made in terms of the National Credit Act, 2005 as amended. [↑](#footnote-ref-13)
14. A signature recognize ito s37:***Accreditation of authentication products and services.****—(1)  The Accreditation Authority may accredit authentication products and services in support of advanced electronic signatures.*

    *(2)  An application for accreditation must—*

    *(a) be made to the Accreditation Authority in the prescribed manner supported by the prescribed information; and*

    *(b) be accompanied by a non-refundable prescribed fee.*

    *(3)  A person falsely holding out its products or services to be accredited by the Accreditation Authority is guilty of an offence*. [↑](#footnote-ref-14)
15. A good example here is the HPCSA rules on health records. If electronically kept, must eb kept as at a point in time, i.e. cannot be in a word-version, for example, that could be changed afterwards. Software that tracks changes and immortalize documents in points in time are therefore preferred. [↑](#footnote-ref-15)
16. https://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2012-14%20-%20Allowances%20Advances%20Reimbursements.pdf. [↑](#footnote-ref-16)
17. GNR.1874 of 8 December 1995: Rules (*Government Gazette*No. 16860) as amended. [↑](#footnote-ref-17)
18. GNR.1438 of 13 November 1998:  General Administrative Regulations as amended on 22/03/2002; 25/07/2002 and 12/03/2010 [↑](#footnote-ref-18)
19. GNR.1438 of 13 November 1998:  General Administrative Regulations as amended. [↑](#footnote-ref-19)
20. GNR.595 of 1 August 2014:  Employment Equity Regulations, 2014 (*Government Gazette*No. 37873). as amended. [↑](#footnote-ref-20)